U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board
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In the Matter of MARTIN F. WOJCIECHOWSKI <u>and</u> DEPARTMENT OF THE NAVY,
NAVAL AIR WARFARE CENTER, Patuxent River, Md.

Docket No. 96-2225; Submitted on the Record;
Issued July 17, 1998
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DECISION and ORDER

Before   MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant met his burden of proof to establish that he sustained in injury in the performance of duty on June 15, 1994; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has given careful consideration to the issues involved, the contentions of appellant on appeal, and the entire case record. With respect to whether appellant met his burden of proof to establish that he sustained in injury in the performance of duty on June 15, 1994, the Board finds that the decision of the hearing representative of the Office dated and finalized September 5, 1995 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

The Board further finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[1] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.[2] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for

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[1] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

[2] 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

review within one year of the date of that decision.[3] When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[4]

Appellant requested reconsideration of the Office's September 5, 1995 decision and submitted statements in which he indicated that he was injured when he visited the employing establishment on an off-duty day to address the handling of a prior employment injury claim. Appellant had already submitted similar statements to the Office and the Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[5]

In the present case, appellant has not established that the Office abused its discretion in its February 29, 1996 decision by denying his request for a review on the merits of its September 5, 1995 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, that he advanced a point of law or a fact not previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office.

The decision of the Office of Workers' Compensation Programs dated February, 29, 1996 and the decision of the Office dated and finalized September 5, 1995 is affirmed.

Dated, Washington, D.C.
        July 17, 1998

                                                            Michael J. Walsh
                                                            Chairman

                                                            David S. Gerson
                                                            Member

                                                            Willie T.C. Thomas
                                                            Alternate Member

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[3] 20 C.F.R. § 10.138(b)(2).

[4] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

[5] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980). Appellant also submitted copies of documents which had already been included in the record.